

Legislative Analysis



RESTRICT STATE AGENCIES FROM ADOPTING RULES MORE STRINGENT THAN FEDERAL RULES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4205 as introduced
Sponsor: Rep. Triston Cole
Committee: Oversight
Complete to 3-15-17

Analysis available at
<http://www.legislature.mi.gov>

REVISED SUMMARY:

House Bill 4205 would amend Sections 32 and 45 of the Administrative Procedures Act of 1969 by prohibiting a state agency from adopting rules more stringent than the applicable federally-mandated standard unless the director of that agency determines there is a "clear and convincing need" to exceed the federal standard. This applies when the federal government has mandated that Michigan promulgate rules.

If the federal government has not mandated that Michigan promulgate rules, then an agency could only promulgate more stringent rules if specifically authorized by statute to do so, or if the director of that agency determines there is a "clear and convincing need" to exceed the applicable federal standard.

There would be an exception in both cases for emergency rules promulgated under Section 48 of the APA, which applies generally to rules aimed at the preservation of the public health, safety, or welfare.

If a proposed rule is more stringent than the applicable federal standard, regardless of whether or not the state was mandated to promulgate rules, the currently required regulatory impact statement must contain either the statute that specifically authorizes the more stringent rule or a statement of the specific facts that establishes the clear and convincing need to adopt the more stringent rule, and an explanation of the unique characteristics of this state that necessitate the more stringent standard.

FISCAL IMPACT:

House Bill 4205 would have an indeterminate fiscal impact on the state government. The magnitude and direction of this impact would depend on two factors: (1) the number of administrative rules that are more "stringent" than federal standards; and (2) the costs associated with enforcing the "stringent" provisions of these rules. It is not entirely clear what constitutes a "stringent" rule, and this uncertainty could require additional legislative guidance and/or judicial interpretation. Determining the enforcement costs would require financial analysis by the Office of Performance and Transformation to isolate the costs of enforcing the "stringent" provisions of administrative rules.

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